



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 17, 2019 (the “Application”). The Tenant applied for return of double the security and pet damage deposits as well as reimbursement for the filing fee.

The Tenant and Landlords appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. Landlord C.S. confirmed receipt of the hearing package and Tenant’s evidence. The Tenant had not received the Landlords’ evidence; however, she did not take issue with this because the only evidence submitted by the Landlords was a One Month Notice which the Tenant had provided to the Landlords.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and all oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to return of double the security and pet damage deposits?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The parties agreed on the following. There was a written tenancy agreement in this matter. There was a second tenant, M.S., in relation to the tenancy agreement. The tenancy started May 01, 2019 and was for a fixed term of six months. Rent was \$1,500.00 per month due on the first day of each month. The tenants paid a \$750.00 security deposit and \$750.00 pet damage deposit.

The Tenant testified that she provided her forwarding address to the Landlords by email September 27, 2019, on the Application, in a letter sent after the Application was filed and on the Condition Inspection Report (CIR) on September 30, 2019.

Landlord C.S. denied that the forwarding address was provided on the CIR. Landlord C.S. testified that she did not receive the September 27, 2019 email until she received the Application. Landlord C.S. later changed this testimony and acknowledged receiving the September 27, 2019 email.

The parties agreed the Landlords did not have an outstanding monetary order against the tenants at the end of the tenancy.

Landlord C.S. testified that the parties did not come to an agreement about the Landlords holding a specific amount of the deposits at the end of the tenancy. The Tenant testified there was no agreement in writing that the Landlords could keep some or all of the deposits.

Landlord C.S. testified that the Landlords did not apply to the RTB to keep the security or pet damage deposits. Landlord C.S. confirmed the Landlords still hold both deposits.

The parties agreed both parties did a move-in inspection.

In relation to the end of the tenancy, the Tenant testified as follows. Her and M.S. went their separate ways at the end of August. She told the Landlords she would vacate before M.S. returned to town and the tenants would end the tenancy September 30, 2019. She did vacate in August. The Landlords said they needed an official document to end the tenancy and she sent them the One Month Notice in evidence. The Landlords subsequently agreed M.S. could stay in the rental unit past September 30, 2019. Given this, there was still furniture and belongings in the rental unit September 30, 2019. Her and Landlord C.S. did a move-out inspection September 30, 2019, completed a CIR and signed it.

The Tenant submitted a Mutual Agreement to End a Tenancy form signed by her but not the Landlords. The Tenant testified that this is one of the forms Landlord C.S. asked her to sign. She testified that she signed it and sent it to the Landlords but never got it back.

The Tenant took the position that the tenancy between the Landlords, M.S. and her ended September 30, 2019 and the Landlords then entered into a new tenancy with M.S.

The Tenant testified that the Landlords contacted her to do another move-out inspection when M.S. vacated; however, she told them that was between them and M.S.

Landlord C.S. testified as follows in relation to the end of the tenancy. The Tenant told the Landlords everyone in the rental unit would vacate by September 30, 2019. The Tenant gave the Landlords the One Month Notice as notice to move out. She attended the rental unit at 1:00 p.m. on September 30, 2019 to do the move-out inspection. The tenants were not ready. She came back at 5:00 p.m. and the rental unit was still full of people and belongings. She did an inspection with the Tenant on September 30, 2019 but did not complete or sign the CIR because belongings were still in the rental unit. M.S. and another occupant lived in the rental unit until November 05 or 06, 2019. She sent a text to the Tenant asking her to do another inspection when M.S. vacated but the Tenant was not willing to do another inspection.

Landlord C.S. testified that she did not sign the Mutual Agreement to End a Tenancy form because she received it the day before the tenants were to vacate.

The Landlords denied that they entered into a new tenancy with M.S. Landlord C.S. testified that she thought everyone was vacating the rental unit September 30, 2019 up until September 30, 2019 when she attended the rental unit. Landlord C.S. testified that they accepted rent from M.S. for October but not November. Landlord C.S. took the position that the Tenant did not give 30 days notice to end the tenancy and therefore the tenancy did not end September 30, 2019. The Landlords took the position the tenancy did not end until November 05 or 06, 2019 when M.S. vacated.

The Tenant submitted the following:

- An email from her to Landlord C.S. dated September 27, 2019 with a forwarding address for her and M.S.

- The Mutual Agreement to End a Tenancy form signed by her but not the Landlords
- The One Month Notice
- A text dated August 31 from the Tenant to the Landlords advising that the tenants would vacate by the end of September
- A move-in CIR

Analysis

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 38 of the *Residential Tenancy Act* (the “*Act*”) sets out the obligations of a landlord in relation to security and pet damage deposits held at the end of a tenancy.

Section 38(1) requires a landlord to return the security and pet damage deposits in full or claim against them within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant’s forwarding address in writing. There are exceptions to this outlined in sections 38(2) to 38(4) of the *Act*.

Policy Guideline 13 sets out the rights and responsibilities of co-tenants under a tenancy agreement. The Tenant and M.S. were co-tenants. Policy Guideline 13 states:

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the

premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.

The Tenant took the position that the tenancy ended September 30, 2019 and the Landlords entered into a new tenancy agreement with M.S. after this date. The Landlords denied they entered into a new tenancy agreement with M.S. and testified that M.S. and an occupant simply did not vacate September 30, 2019 as planned.

The documentary evidence does not support that the Landlords entered into a new tenancy agreement with M.S. The August 31 text and September 27, 2019 email both support the position that the plan was for all tenants and occupants to vacate the rental unit September 30, 2019. The September 27, 2019 email shows this was still the plan on this date as the Tenant provided a forwarding address for M.S. It does not accord with common sense that M.S. would provide a forwarding address for M.S. on September 27, 2019 if the plan was for him to stay in the rental unit.

I am not satisfied the Landlords entered into a new tenancy agreement with M.S. I acknowledge that the Landlords accepted rent for October and that this may lead to a finding that a new tenancy agreement was established. However, the Landlords testified that they did not enter into a new tenancy agreement with M.S. and there is insufficient evidence before me to show that they did. I am not satisfied the payment for October alone is enough to prove a new tenancy agreement was established. This is particularly so given M.S. vacated November 05 or 06, 2019. It would have been unusual for the parties to enter into a new tenancy agreement in October and then end that tenancy a month and a week later. I may have found differently if M.S. had remained in the rental unit for months but he did not. He remained in the rental unit for a month and a week.

I do not find it necessary to decide whether the original tenancy agreement was legally ended earlier than November 05 or 06, 2019 as M.S. remained in the rental unit until November 05 or 06, 2019. For the purposes of section 38(1) of the *Act*, the original tenancy did not end until November 05 or 06, 2019. I do not accept that the Landlords were required to return the deposits, or that section 38(1) of the *Act* was triggered, while M.S. remained in the rental unit.

I am satisfied the Tenant provided a forwarding address September 27, 2019 and am satisfied the Landlords received the forwarding address September 27, 2019. However, November 05 or 06, 2019 are the relevant dates for the purposes of section 38(1) of the

Act. The Landlords had 15 days from November 05 or 06, 2019 to repay the deposits or claim against them.

I find the Application was premature. I acknowledge that the Landlords had not repaid the deposits or filed a claim against them by the time of the hearing. If the Application had been made a day or two early, I may have considered it despite it being premature. However, the Application was made while M.S. was still living in the rental unit and more than a month early. In these specific circumstances, I am not satisfied it is appropriate to consider whether the deposits should be returned.

Given the issues at the hearing, I did not confirm the Tenant's current address. If the Tenant wants the deposits returned, the Tenant should provide the Landlords her current address. Once the Landlords receive this, the Landlords must comply with the *Act* in relation to the deposits.

I note section 39 of the *Act* which states:

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

I have found that this tenancy ended November 05 or 06, 2019 for the purposes of section 38 and 39 of the *Act*.

The Tenant's request for return of double the deposits is dismissed with leave to re-apply. The Tenant can re-apply if the Landlords fail to comply with the *Act* in relation to the deposits.

Given the Tenant was not successful in the Application, I decline to award her reimbursement for the filing fee. This request is dismissed without leave to re-apply.

Conclusion

The Tenant's request for return of double the deposits is dismissed with leave to re-apply. The Tenant can re-apply if the Landlords fail to comply with the *Act* in relation to the deposits.

The request for reimbursement for the filing fee is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 08, 2020

Residential Tenancy Branch